

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 24,
2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 52, SB 254 1/19/2001
Executive Action: SB 222, SB 132, SB 170, HB 52
SB 254

HEARING ON HB 52

Sponsor: REP. DAVE GALLIK, HD 52, HELENA

Proponents: Mike McCabb, Colonel Montana National Guard

Opponents: None

Opening Statement by Sponsor:

REP. DAVE GALLIK, HD 52, HELENA he handed out a packet **EXHIBIT(jus19a01)**. He stated this bill will adopt the most recent amendments to the uniform code of military justice and it also deletes a reference to a repealed federal statute.

Proponents' Testimony:

Mike McCabb, Colonel Montana National Guard, explained how the case of Lee vs. Montana indicates that the state has a right to adopt existing federal laws and regulations, but does not have the right to adopt changes in the federal laws and regulations that will occur in the future. He mentioned that it is necessary for the Montana National Guard to keep this statute current by presenting before the legislature asking to adopt the amendments.

He pointed out this is the reason that he is representing the Department of Military Affairs and as a separate part of this bill it amends section 25-13-608 that talks about property exempt without limitations.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. DAVE GALLIK, HD 52, HELENA, closed his testimony and asked for a do concur on this bill.

HEARING ON SB 254

Sponsor: SEN. MIKE HALLIGAN, SD 34, MISSOULA

Proponents: Pam Bucy, Assistant Attorney General
 Jim Oppedahl, Montana Board of Crime Control
 Troy McGee, Chief of Police Helena
 Ellen Bush, Department of Corrections
 Sharon Hoff-Brodowy, Montana Catholic Conference

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, stated this bill addresses the issue of victims' services that are needed and to provide for

an office devoted solely to providing services to victims of crimes. He said that currently the Montana Board of Crime Control is the state's designated planning and program development agency for the criminal justice system. He added that the attorney general is responsible for insuring that victims and witnesses of crimes receive fair and proper treatment so by creating the Office of Victims' Services within through the Department of Justice is simply following the mandate that was put into law for the attorney general. **EXHIBIT(jus19a02)** He handed out information.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, explained when a victim is harmed by a criminal act, the agencies that make up the criminal justice system have a moral and legal obligation to assume responsibility and for the victims. She said the core staff for the Victim Service Office would come from the Montana Board of Crime Control and this bill would not be a cost for the state. She added this would be an opportunity for the attorney general's office to reorganize the staff, who already administer services to victims.

Jim Oppedahl, Montana Board of Crime Control, said the purpose of the crime victim compensation is to strengthen the performance of the justice system through rendering fair, just and proper compensation and assistance in a sensitive and humane manner. He believes that the consolidation of victim services into one office would improve the services by focusing greater attention in this area and unified management.

Troy McGee, Chief of Police, Helena, said this bill would provide better services.

Ellen Bush, Department of Corrections, she handed in a testimony **EXHIBIT(jus19a03)**.

Sharon Hoff-Brodowy, Montana Catholic Conference, said the centralization of this office would be appropriate and would help victims with their healing.

Opponents' Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN GROSFIELD asked about the technical notes on the fiscal note. **Jim Oppedahl** answered the fiscal note is showing a transfer of the FTE and related expenses in the Board of Crime Control from the board to the Department of Justice accounts. He

added that the technical note is in references to the bill section 53-9-109, which is the crime victim's compensation account.

CHAIRMAN GROSFIELD asked if an according instruction to the bill is needed and the request on the fiscal note for \$25,000? **Jim Oppedahl** answered yes it is being done.

Closing by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA, summarized this office would be able to provide services to victims and it is well needed.

{Tape 1; Side B}

EXECUTIVE ACTION ON SB 222

Motion: **SEN. O'NEIL** moved **SB 222 DO PASS**. An Amendment was handed out **EXHIBIT(jus19a04)**.

Discussion:

Larry Dodge pointed out the jury isn't making any laws within this bill, but they are considering it and this bill would enable the accused person to be questioned into evidence becoming part of what the jury discusses. He said that the right of jurors is extended to them by the defendant and it is the right of the accused, which is the focus of this bill, the accused could then present to the jury arguments of the law that would be relevant to his or her defense. He stated that by giving the defendant more opportunity to explain his or her side of the story is an important issue with this bill and as far as the system is providing public input to the juries, they are not making the laws. He said that more public opinion is given if juries are allowed to come in and comment on the law.

SEN. HALLIGAN stated this bill seems to be amending the constitution and the terms of language that are used within this bill such as applicability, intent and merit took years to understand. If this language is added, he said litigation would go on for a long time. He felt that the language of this bill would create extreme difficulty and amend the constitution.

SEN. DUANE GRIMES mentioned his concerns deal that the language denotes some confrontation as from the perspective of a fully informed jury and from the perspective of an accused criminal if they were given the opportunity to argue constitutionally.

SEN. AL BISHOP said a pilot program would be of great importance, but since this is an amendment to the constitution, than it becomes difficult. He wondered about the disparity that would take place in treating people and the juries.

CHAIRMAN GROSFIELD pointed out that the title of the bill mentions that it is constitutional and once that it is within the title then the bill cannot be changed into a statute or the other way around. He said this could go on the ballot in 2002 and if it passed there would need to be a law to follow up legislation to address how a jury will function.

He asked when the accused would have an opportunity to question the jury, during a course of a trial or afterwards, or if a member of the jury would ask for the accused? He added that then you would have to gather all the attorneys and judges and begin the trial all over again. This would be hard to visualize how this could happen because you can't have twelve jurors asking questions and having discussions with the accused.

SEN. JERRY O'NEIL said some of the items within the bill already pertain to procedures that are established in the trials where evidence is presented either in the prosecutor's portion of the trial or the defendant's portion of the trial. He said this would make a difference during the time of the defendant's defense where jurors could ask questions. He added that this should not change the whole structure of a trial and the jurors' instructions.

CHAIRMAN GROSFIELD said there is a policy question pertaining to the jails having prisoners that should not be there and whether this is a legislative question. This policy question rises to the level and stature of being considered by this committee and this bill would allow consideration on a county-by-county or district court-by-district court basis. He added that this bill seems to have a separation of powers delegating authority between judicial branches. This bill could also raise equal protection issues and if the meaning behind this bill is to not have so many people in jail for crimes that they ought to not be there for then that would be a good goal to work towards, but this bill is not a way to fix it.

SEN. O'NEIL explained how other bills affect working with juries and judges and some areas are forced upon by the federal government to have discussion with the jury and this bill would allow discussion to be brought to a jury.

{Tape 2; Side A}

CHAIRMAN GROSFLEID said this bill would not work that way because this would not apply to the federal system. If the federal government does require a law to be passed such as the speed limit for the state - so as to not lose federal money for the state, it becomes federal extortion and then laws could be passed with a loophole. But the federal government could come back to us and take the state funds back. This bill does not apply to federal law.

SEN. O'NEIL said this bill would not be a loophole and felt that this would be a saving grace to all mandated laws. He hoped that this bill would apply in a federal court within the jurisdiction of the district of Montana.

Vote: Motion **SB 222 DO PASS failed 8-1** roll call vote with **SEN. O'NEIL** voting yes.

Motion: **SEN. HALLIGAN** moved **SB 222 BE TABLED**.

Vote: The motion **SB 222 BE TABLED carried 8-1** on a roll call vote with **SEN. O'NEIL** voting no.

EXECUTIVE ACTION ON SB 132

Motion: **SEN. HALLIGAN** moved **SB 132 BE AMENDED**. Amendments were handed out **EXHIBIT(jus19a05)**.

Discussion:

SEN. HALLIGAN explained the amendment needed to be strengthened and some language has been struck out, which changed the bill to become a newborn surrender law instead of an abandonment law. He added that he looked into the state of Michigan's laws and used data dealing with packets of information that were provided and a hotline available to parents.

He said educational information would be provided by the Catholic Social Services, Lutheran Social Services and private adoption agencies to schools and places that would be appropriate for individuals who are in a situation that they can apply with the law. He stated that thirty days was the amount intended for the time possible for a child to return to the parents - offering protection to parents who might want to revoke their actions.

He summarized this amendment uses Michigan's approach to abandonment, and combined with Montana's laws, the department would have to go through the same procedures with respect to termination, filing a petition and publication of notice for the constitutional protections of dropping off of a baby.

Valencia Lane pointed out the Michigan Act, Section 12 would be terminated in three years and this is the section that sets up the toll-free hotline and the packet giving the legislature three years to decide if to continue the toll-free number or packet, but not both.

SEN. O'NEIL said he thinks this amendment is in the best interest of the child.

SEN. RIC HOLDEN asked if the existing toll-free line is \$15,000?

SEN. HALLIGAN answered there was question to whether or not this hotline number will be in existence for much longer and may not be funded.

Shirley Brown, Program Bureau Chief Family Child & Services said currently there is a contract with Deaconess Hospital in Billings to have a child abuse hotline and it is an annual contract, which is funded from a federal grant.

SEN. HOLDEN said this bill could then go to the Finance Committee and it may be terminated due to the fiscal impact.

SEN. HALLIGAN stated is why it offers a toll-free hotline because there is not a new number available.

SEN. O'NEIL asked if the reference to the toll-free hotline be deleted and another charity could pick it up? **SEN. HALLIGAN** answered if it is not a mandate within the bill, it might not be available for other agencies to pick this up due to their budgets.

Sharon Hoff-Brodowy, Montana Catholic Conference said the Catholic Social Services for Montana does have a toll-free number and it is to help parents with adoption procedures and it might add costs to use the line for abandonment issues.

SEN. O'NEIL asked if it would be possible to add to the amendments saying that if a private organization doesn't have a toll-free hotline within six months after passing that the state shall offer one? **SEN. HALLIGAN** answered it would be sufficient to use the existing department's hotline and not incur any extra expense. If the hotline gets cut then, they would try to deal with private organizations to use their hotlines.

SEN. HOLDEN said it is a good strategy, but the state may end up paying for it. He added that it may be hard to justify the expense if only one call comes in and the fiscal note is hefty.

SEN. O'NEIL added a charitable organization should be able to provide a toll-free hotline. He said he would like to strike the hotline on pages seven and eight - amending section twelve to take out subsection (1).

Substitute Motion: **SEN. O'NEIL** moved the changed **AMENDMENT (EXHIBIT 5)**

Discussion:

SEN. HOLDEN said if the bill were to pass without the hotline available, then other organizations would be giving the information to hospitals and areas for people to recognize that if there is an abandoned baby who they should call. He mentioned that possibly they could bypass the finance department by explaining the use of the hotline, last year there was only one phone call/incident of an abandoned baby, so someone could show the finance department where the money would be funded such as essentials needed for this baby i.e. diapers and formula. He said that once an abandoned baby is mentioned there becomes an outpouring of support from organizations and services so no need from the government has to come and costs could be saved in this area.

CHAIRMAN GROSFIELD said the fiscal note shouldn't be an issue to address because money for the hotline is already available and for our state, five babies being called in during the year may be overstated. He said he didn't want to eliminate the list of details in the subsection because they would be needed to assist organizations with handing out packets or pamphlets.

{Tape 2; Side B;}

SEN. HALLIGAN said the amendment could reflect the existing toll-free hotline and it could be drafted to be able for people to be able to use it.

SEN. O'NEIL mentioned the state has tons of hotline phone numbers for every service and this hotline may make it harder for people to find the direction to go. He added that it is a mistake to add another hotline due to the cost as well as being a duplication of all the other hotlines that are available for services now.

Vote: **Substitute Motion failed 7-2** with **SEN. HOLDEN** and **SEN. O'NEIL** voting yes.

Withdrawn Motion:

SEN. HALLIGAN WITHDREW his first motion to amend SB 132 so that he can redraft the amendments. He said that Section 12 will be amended to say that the safe delivery program may include, but is not limited to, a toll-free hotline, adding the language "may include".

Motion: SEN. HALLIGAN moved to amend Section 12 of **SB 132 TO INCLUDE THE ITEMS IN SUBSECTION (1) IN THE TOLL-FREE HOTLINE AND "MAY INCLUDE" LANGUAGE FOR THE USE OF A HOTLINE.**

Discussion:

Valencia Lane said the hotline will become discretionary that they may have the availability of a 24 hour hotline and if they have the hotline then it must include the items within subsection (1) then subsection (2) remains a must - they must provide a pamphlet.

SEN. HALLIGAN said pamphlets will be provided and that state will offer this function.

SEN. HOLDEN stated the pamphlets are not a big part of the fiscal note and can be taken care of.

CHAIRMAN GROSFIELD mentioned legal questions within this amendment should have the state's stamp of approval on how they are worded so that private entities are not in the position of giving legal advice to their own liability. He noted the fiscal costs aren't that much for pamphlets.

Valencia Lane felt it would be appropriate to add a reference to the program with the hotline and the pamphlet in the title and to change the amendments to have a reference within the title.

Vote: Motion carried unanimously.

Discussion:

SEN. HALLIGAN mentioned in the section; "Guardian Ad Litem" this definition means an attorney to represent a new born, but it could be any person, having an attorney. He wanted to strike the word "attorney" and add "a person".

Motion: SEN. HALLIGAN moved **SB 132 GUARDIAN AD LITEM SECTION TO STRIKE WORD "ATTORNEY" AND ADD "A PERSON".**

Vote: Motion carried unanimously.

Motion/Vote: SEN. HALLIGAN moved SB 132 DO PASS AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 170

Motion: SEN. O'NEIL moved SB 170 BE AMENDED. **EXHIBIT(jus19a06)**

Discussion:

SEN. O'NEIL said this bill will allow hearsay to be used so that the child is taken away, within the amendment he is proposing that an investigative protocol is used. **EXHIBIT(jus19a07)**

Substitute Motion: SEN. HALLIGAN motioned to AMEND.

Discussion:

SEN. HALLIGAN said he the bill needs to be cleaned up with language and this amendment gives change to existing law. He stated that this language may be troublesome and referenced page 17, "hearsay evidence of statements made by the affected youth is admissible at the hearing" and advised it should be taken out. It becomes intimidating to youths and adults to have video tape or any type of taping done for investigative measures.

SEN. O'NEIL stated this bill increases the use of hearsay and the amendment is still allowing any hearsay to be used in the show cause hearing when they need to protect a child. He felt that without the amendment there will be a big change to the law and making it more dangerous to families.

Vote: Substitute Motion to be AMENDED carried unanimously.

Substitute Motion: SEN. O'NEIL made a motion to AMEND.

Discussion:

SEN. O'NEIL said this motion would include language to say "hearsay evidence of statements made by the affected child to a department social worker or to a professional qualified as an expert by the court is admissible at the hearing only if an audio or video recording of the statements by the child are made available to all parties prior to the hearing".

SEN. HALLIGAN commented this affects rules of procedures as example, hearsay statements could be made to a medical professional. He said that rules of evidence give an utterance and the same rules that apply to adults would apply to children regarding the hearsay and it goes back to existing law.

SEN. O'NEIL said the substitute motion was not applying to excited utterances because medical records would still be allowed within the hearing. He added that all hearsay evidence would be permissible except a for a social worker or other professional interviewer.

Vote: Substitute Motion **failed 8-1** with **SEN. O'NEIL** voting yes.

Motion: **SEN. HALLIGAN** moved that **SB 170 DO PASS AS AMENDED.**

Vote: Motion that **SB 170 DO PASS AS AMENDED** carried unanimously.

EXECUTIVE ACTION ON HB 52

Motion: **SEN. WALT MCNUTT** moved that **HB 52 BE CONCURRED IN.**

Discussion: None

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 254

Motion: **SEN. HALLIGAN** moved that **SB 254 DO PASS.**

Discussion: None

Vote: Motion that **SB 254 DO PASS** carried unanimously.

ADJOURNMENT

Adjournment: 11:55 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus19aad)